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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00560.L58530000. EU0000.241A00; N-91073; 13-08807; MO# 4500052481; TAS: 14X5232]

Notice of Realty Action: Direct Sale of Public Land (N-91073) for Affordable Housing Purposes in Las Vegas, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell a 5-acre public land parcel located in the southern portion of the Las Vegas Valley in Clark County, Nevada, under the authorities of Sections 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and the BLM land sale conveyance regulations. In compliance with Section 7b of the Southern Nevada Public Land Management Act of 1998 (SNPLMA), the BLM proposes that the parcel be sold by direct sale to the Nevada Housing Division, a division of the State of Nevada, Department of Business and Industry, at a discounted rate based upon the appraised fair market value (FMV).

DATES: Comments regarding the proposed sale must be received by the BLM on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The sale would not be held prior to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments concerning the proposed sale are to be sent to the BLM Las Vegas Field Office, Assistant Field Manager, Division of Lands, 4701 N.

Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Michelle Leiber at 702-515-5168, or e-mail at mleiber@blm.gov. For information on the SNPLMA Section 7b affordable housing land sale program go to:

http://www.blm.gov/nv/st/en/snplma/affordable_housing.html. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Nevada Housing Division submitted a sale nomination application to the BLM for the proposed affordable housing project called the Agate Avenue Senior Apartments. In response, the BLM proposes to sell a 5-acre parcel of public land located in the southern portion of the Las Vegas Valley in Clark County, Nevada, further described as:

Mount Diablo Meridian

T. 22 S., R. 61 E.,

sec. 20, Lot 25.

The area described contains 5 acres, in Clark County, Nevada.

The parcel is identified as a portion of Clark County Assessor Parcel Number 177-20-601-003. A map delineating the parcel proposed for sale to the Nevada Housing Division is available for public review at the BLM Las Vegas Field Office or at the website http://www.blm.gov/nv/st/en/snplma/affordable_housing.html.

The parcel is located at the intersection of Agate Avenue and Kimo Street within the Las Vegas Boulevard and Interstate 15 corridor south of Blue Diamond Road. The southern and eastern boundaries of the parcel abut developed residential and commercial properties and the northern and western boundaries abut BLM-managed public land. Access is provided by Agate Avenue located along the northern boundary of the parcel. The parcel would be sold using the direct sale procedures, and under such terms, covenants, or conditions as determined necessary for affordable housing purposes by the BLM authorized officer pursuant to SNPLMA Section 7(b), Public Law 105-263, 112 Stat. 2343, as amended, and the Nevada Guidance Policy and Procedures for Affordable Housing Disposals (Nevada Guidance) approved on August 8, 2006.

The BLM, in consultation with the Department of Housing and Urban Development (HUD), may make BLM-managed public lands available for affordable housing purposes in the State of Nevada at less than the appraised FMV. The amount administratively discounted from the FMV is calculated according to the Nevada Guidance provisions. Under Section 7(b) of the SNPLMA, housing is “affordable housing” if it serves low-income families as defined in Section 104 of the Cranston-Gonzales National Affordable Housing Act, 42 U.S.C. 12704. In the Cranston-Gonzales Act, the term “low-income families” means families whose incomes do not exceed 80 percent of the median income for the area as determined by HUD, or as otherwise adjusted by statute. The State of Nevada’s proposed project would use 100 percent of the parcel to serve senior citizens, including seniors with special needs, with income at or below 60 percent of the area median income, which represents extremely low income based on the Nevada Guidance.

The appraised FMV for the 5-acre parcel is \$1,040,000. Under the Nevada Guidance, and after consultation with HUD, the BLM authorized officer has determined that discount percentages for the respective median income category would be administratively applied to the FMV to establish the price of the public land to be sold under these provisions. The FMV for this property would be 95 percent discounted consistent with the Nevada Guidance resulting in a federally approved sale price of \$52,000, so long as the property is used for affordable housing purposes consistent with the covenants, terms and conditions described in the patent.

Consistent with the Nevada Guidance, the preferred method of sale is direct sale. Such method is appropriate under regulation when “A tract is identified for transfer to State or local government...” (43 CFR 2711.3-3(1)), and the SNPLMA Section 7(b) which requires lands made available for affordable housing purposes to be made available only to State or local government entities, including local public housing authorities. The direct sale method is also supported when, “A tract is identified for sale that is an integral part of a project or public importance and speculative bidding would jeopardize a timely completion and economic viability of the project” (43 CFR 2711.3-3(2)).

The Clark County, North Las Vegas, Boulder City, and Mesquite 2010-2014 HUD Consolidated Plan identified both rental housing serving low-income and extremely low-income households and housing for persons with special needs, including the elderly and frail elderly, as its top two priorities. The consolidated plan identifies a significant housing need for elderly persons including those with special needs and physically disabled in southern Nevada. Since the SNPLMA was passed in 1998, the State of

Nevada has invested considerable time and substantial resources in finding eligible properties for affordable housing projects. Consistent with the SNPLMA joint selection process, the Nevada Housing Division consulted with the BLM and Clark County concerning selection of this parcel for disposal for affordable housing purposes. According to the consolidated plan, the need for affordable housing is an issue of public importance and this tract of land would provide a key piece of a project meant to address that need.

The Nevada Housing Division's application includes a comprehensive plan for assessment and evaluation of the need for and the feasibility of this affordable housing project. HUD, a required consultation party for sales proposed under the SNPLMA Section 7(b), reviewed the Agate Project and provided the BLM its approval recommendation dated May 28, 2013. HUD's recommendation confirmed that the Agate Project as proposed would use 100 percent of the parcel to serve senior citizens, including seniors with special needs, with income at or below 60 percent of the area median income. HUD further confirmed that the Agate Project location and need are consistent with Section 7(b) of SNPLMA, and the Cranston-Gonzales Act, as well as the 2010-2014 Clark County Consolidated Plan. HUD conditioned its approval recommendation on two continuing requirements: (1) The Nevada Housing Division and Clark County, as appropriate, are to report the proposed Agate Project, including public and private funding sources, in HUD required documents and plans; and (2) Submittal by the Nevada Housing Division of a disposition and development agreement (DDA) and final site plan to the BLM for review and concurrence in consultation with HUD. A DDA will be executed between the Nevada Housing Division and its co-developers,

Ovation Development Corporation, and Accessible Space, Inc., to ensure that the terms and conditions for development of the project are consistent with previously submitted comprehensive plan and other applicable regulations and procedures.

The parcel is within the disposal boundary identified by the U.S. Congress in the SNPLMA, and is in conformance with the BLM Las Vegas Resource Management Plan (RMP) and decision LD-1, approved by Record of Decision on October 5, 1998. The parcel was also analyzed in the Las Vegas Valley Disposal Boundary Final Environmental Impact Statement and approved by Record of Decision on December 23, 2004. The BLM has completed a site specific Determination of National Environmental Act Adequacy document number DOI-BLM-NV-S010-2012-0144-DNA. The parcel is not required for any Federal purpose. Consistent with 43 CFR 2711.3-1(d), a deposit of not less than 20 percent of the federally approved sale price, as discounted consistent with the Nevada Guidance, must be submitted on or before 30 days from the sale offer, by 4:00 p.m. Pacific Time at the BLM Las Vegas Field Office. Payment(s) will reference BLM serial number N-91073, and must be made in the form of certified check, postal money order, bank draft, cashier's check, or any combination thereof, made payable in U.S. dollars to the order of the Department of the Interior, Bureau of Land Management (or DOI, BLM).

Failure to submit the deposit will result in forfeiture of the sale offer. The remainder of the sale price must be paid within 180 days following the date of the sale offer. Failure to pay the full price within the 180 days will disqualify the sale offer and cause the entire 20 percent deposit to be forfeited to the BLM, 43 CFR 2711.3-1(d) and 2711.3-3(d). No exceptions will be made. The BLM cannot accept the full sale price at any time

following the expiration of the 180th day after the sale offer. Payment may be provided electronically through escrow by Electronic Fund Transfer (EFT), or in the form of a certified check, postal money order, bank draft, cashier's check, or any combination thereof, made payable in U.S. dollars to the order of the DOI, BLM. Arrangements for EFT through escrow to the BLM shall be made a minimum of 14 days prior to the date of payment. The patent would be issued following receipt of final payment, as appropriate.

If patented, the patent will include the following numbered terms, covenants, and conditions:

1. Affordable Housing: Pursuant to Section 7(b) of the SNPLMA, the term "affordable housing" as used in the sale patent, means housing that serves low-income families as defined in Section 104 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12704).
2. Affordable Housing Purpose: For purposes of this proposed sale patent, the term "affordable housing purpose" means for an affordable housing project which commits 100 percent of living space to affordable housing, and which overall is used for no purpose other than residential use and related residential use amenities.
3. Construction: For purposes of the sale patent, the term "construction" means ongoing and substantial work dedicated to the building of the dwelling structures and other improvements necessary for the realization of the low-income affordable housing project located on these lands conveyed under Section 7(b) of the SNPLMA.
4. Project: For purposes of this patent, the term "Project" means the construction and resulting dwelling structures and other improvements on these lands conveyed under

Section 7(b) of the SNPLMA, as approved by the BLM in consultation with HUD, that are necessary for the realization of the low-income affordable housing purposes.

5. Covenant and Restriction: The Nevada Housing Division is hereby bound and covenants for its self and all successors-in-interest to use the land as approved by the BLM in consultation with HUD, and as conveyed by the sale patent, only for affordable housing purposes for a period of 40 years (period of affordability). Such period will commence upon the issuance of a certificate of occupancy or its equivalent by the appropriate local governmental authority (i.e. Clark County). The Nevada Housing Division further hereby covenants and binds its self and all successors-in-interest to develop the subject parcel according to a disposition and development agreement (DDA) between the Nevada Housing Division and its co-developers that has received concurrence by the BLM in consultation with the HUD. As in this patent, the DDA shall have a provision stating that in the event of any conflict between the terms of the DDA and the patent and applicable laws, the patent and applicable laws will control. This affordable housing and DDA covenant will be deemed appurtenant to and to run with the land.

6. Time Limit: Reversion and Fair Market Value. If, at the end of 5 years from the date of the sale patent, the Agate Project is not under construction in accordance with a DDA and a final site plan approved by the BLM in consultation with the HUD then, at the option of the United States, the lands, or parts thereof, will revert to the United States, or, in the alternative, the United States may require payment by the owner to the United States of the then fair market value.

7. Use Restriction: Reversion and Fair Market Value. All land conveyed by the sale patent will be used only for affordable housing purposes as approved by the BLM in consultation with the HUD during the period of affordability. If at any time during the period of affordability any portion of the land conveyed by the sale patent is used for any purpose other than affordable housing purposes by the Nevada Housing Division, or its successor-in-interest, then at the option of the United States, those lands not used for affordable housing purposes will revert to the United States; or, in the alternative, the United States may, at that time, require payment to the United States of the then FMV, or institute a proceeding in a court of competent jurisdiction to enforce the covenant set forth above to use the land conveyed only for affordable housing purposes.

8. Enforcement: The covenant/use restriction and the reversionary interest may be enforced by the BLM or the HUD, or their successors-in-interest, as deemed appropriate by agreement of these two Federal agencies at the time of enforcement, after reasonable notice including an opportunity to cure any default (90 days) to the Nevada Housing Division and the landowner of record. If any necessary cure has not been completed and is shown to be impossible by the end of the 90 days, and diligent and substantial efforts are underway to cure such default, the Federal agencies may consider a request for a reasonable extension of time to complete cure of such default.

9. Simultaneous Transfer: The Nevada Housing Division, upon issuance and acceptance of the sale patent, will simultaneously transfer by deed the land conveyed by this sale patent to its successor-in-interest, as reviewed and approved by the BLM in consultation with HUD.

10. Indemnification and Hold Harmless: By accepting this patent, the Nevada Housing Division, subject to the limitations of law and to the extent allowed by law, will be responsible for the acts or omissions of its officers, directors and employees in connection with the use or occupancy of the patented real property. Upon simultaneous transfer as described above, successors-in-interests to the Nevada Housing Division of the patented real property, will indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the successors-in-interest, or its employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the successor-in-interest's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the successor-in-interest, and its employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, State, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used or otherwise disposed of on the patented real

property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant will be construed as running with the parcel of land patented or otherwise conveyed by the United States, and may be enforced against successors-in-interest, by the United States in a court of competent jurisdiction.

No representation or warranty of any kind, express or implied, is given or will be given by the United States as to the title, the physical condition or the past, present, or potential uses of the land proposed for sale. However, to the extent required by law, such land is subject to the requirements of Section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended (42 U.S.C. 9620(h)).

If patented, title to the land will be subject to the following numbered reservations to the United States:

1. All minerals are reserved to the United States. Permittees, licensees, and lessees of the United States retain the right to prospect for, mine, and remove such leasable and saleable minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, together with all necessary access and exit rights;
2. A right-of-way for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945); and
3. A reversionary interest as further defined in the above terms, covenants, and conditions.

If patented, title to the land will be subject to:

1. Valid existing rights [of record], including, but not limited to those documented on the BLM public land records at the time of sale and as defined below;
2. A right-of-way for public county road (Agate Avenue) purposes reserved to Clark County, its successors and assigns, by right-of-way number N-59284, pursuant to Title V of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);
3. A right-of-way for flood control (#00-29559) purposes reserved to Clark County, its successors and assigns, by right-of-way number N-73298, pursuant to Title V of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);
4. A right-of-way for sanitary sewer pipeline purposes reserved to the Clark County Water Reclamation District, its successors and assigns, by right-of-way numbers N-61105 and N-61394, pursuant to Title V of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761); and
5. A right-of-way for water pipeline purposes reserved to the Las Vegas Valley Water District, its successors and assigns, by right-of-way number N-61409, pursuant to Title V of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Pursuant to Section 4(c) of the SNPLMA, subject to valid existing rights, the subject land is withdrawn from location and entry under the mining laws and from operation under the mineral and geothermal leasing laws until Secretarial termination of the withdrawal or patenting of the land. Such withdrawal is documented under case file number N-66364, effective as of October 19, 1998. In addition, by operation of regulation 43 CFR 2711.1-2(d), through publication of this notice, the lands are segregated and not subject to appropriation under the public land laws, including the mining laws. Through either the withdrawal or the segregation, any subsequent

application for an appropriative use will not be accepted, will not be considered as filed, and will be returned to the applicant.

Documents concerning the sale, appraisal, reservations, procedures, and conditions, and other environmental review are available for review at the BLM Las Vegas Field Office at the address in the “ADDRESSES” section. If you wish to submit a written comment concerning the sale, before including personal identifying information in your comment such as your address, phone number, e-mail address, etc., you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The BLM Las Vegas Field Manager will review the comments of all interested parties concerning the sale. To be considered, comments must be received at the BLM Las Vegas Field Office on or before the date stated in the “DATES” section.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1-2

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